

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE GROUND ROUND INDEPENDENT
OWNERS COOPERATIVE, LLC,

Plaintiff,

- vs. -

Civil Action No.: 05-CV-10780-NMG

CHARLES WHITMAN a.k.a. Chuck
Whitman, C.T.W. DEVELOPMENT
CORPORATION, RESTAURANT
CONCEPTS UNLIMITED CORPORATION,

Defendants.

PLAINTIFF'S REQUEST FOR ISSUANCE OF A NOTICE OF DEFAULT

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS:

The Ground Round Independent Owners Cooperative, LLC (the "IOC"), requests that the Clerk of this Court issue a notice of default against Defendant Restaurant Concepts Unlimited Corporation pursuant to Fed. R. Civ. P. 55(a).

This request is based on the Affidavit of Juan Alexander Concepción, incorporated herein by reference, which shows:

1. Restaurant Concepts Unlimited Corporation was duly served with the summons and complaint on April 25, 2005.
2. The Return of Service filed with this Court on May 3, 2005 establishes that service of process was proper pursuant to Fed. R. Civ. P. 4. A true and accurate file-stamped copy of the Return of Service is attached to the Affidavit of Juan Alexander Concepción as Exhibit "A."

3. Restaurant Concepts Unlimited Corporation has failed to timely plead or otherwise respond to the complaint.
4. The applicable time limit for responding under Fed. R. Civ. P. 12 has expired.
5. On information and belief, Restaurant Concepts Unlimited Corporation is a limited liability company organized under the laws of the State of Ohio with its principal place of business in Boardman, Ohio. True and accurate copies of corporate documents reportedly on file with the Ohio Secretary of State are attached to the Affidavit of Juan Alexander Concepción as Exhibit "B."
6. On belief and information, Restaurant Concepts Unlimited Corporation is not an infant or an incompetent person.
7. On belief and information, Restaurant Concepts Unlimited Corporation is not in the military service of the United States or its allies, as defined in the Soldier's and Sailor's Civil Relief Act of 1940, 50 U.S.C. Appendix, § 520(1).

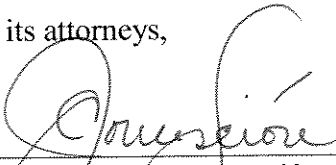
WHEREFORE, the IOC requests that the Clerk of this Court issue a notice of default against Restaurant Concepts Unlimited Corporation pursuant to Fed. R. Civ. P. 55(a).

Signed under penalties of perjury.

Respectfully Submitted,

THE GROUND ROUND INDEPENDENT
OWNERS COOPERATIVE, LLC,

By its attorneys,



Juan Alexander Concepción, BBO No. 658908
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110-2131
(617) 345-1000

Craig R. Tractenberg, Esq. (PA I.D. No. 34636)
(Admission *Pro Hac Vice* to be filed)
NIXON PEABODY LLP
1818 Market Street, 11th Floor
Philadelphia, PA 19103
(215) 246-3525

Dated: May 18, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE GROUND ROUND INDEPENDENT
OWNERS COOPERATIVE, LLC,

Plaintiff,

- vs. -

Civil Action No.: 05-CV-10780-NMG

CHARLES WHITMAN a.k.a. Chuck
Whitman, C.T.W. DEVELOPMENT
CORPORATION, RESTAURANT
CONCEPTS UNLIMITED CORPORATION,

Defendants.

**AFFIDAVIT IN SUPPORT OF PLAINTIFF'S REQUEST FOR ISSUANCE OF A
NOTICE OF DEFAULT**

Juan Alexander Concepcion, being duly sworn, deposes and states:

1. My name is Juan Alexander Concepción.
2. I am an associate with the law firm of Nixon Peabody LLP, 100 Summer Street, Boston, Massachusetts 02110 and am duly admitted to practice law in the Commonwealth of Massachusetts and before this Court. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.
3. I am an attorney of record for Plaintiff The Ground Round Independent Owners Cooperative, LLC, in this action.
4. On April 20, 2005, I caused copies of the summons and complaint in this action to be delivered to Richard S. Fabian, Process Server in the State of Ohio. Pursuant to Fed. R. Civ. P. 4, Mr. Fabian properly served the summons and complaint on Defendant Restaurant Concepts Unlimited Corporation on April 25, 2005 and certified that fact to this Court in a Return of Service, dated April 25, 2005. The Return of Service was duly filed with this Court on May 3,

2005. A true and accurate file-stamped copy of the Return of Service is attached to this Affidavit as Exhibit "A."

5. Restaurant Concepts Unlimited Corporation has failed to timely serve or file an answer or otherwise respond to the complaint in this action.

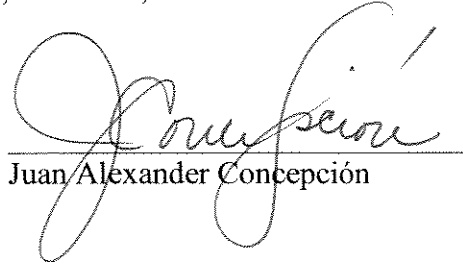
6. Under Fed. R. Civ. P. 12(a)(1)(A), the time limit for responding to the complaint has expired, and the time for Restaurant Concepts Unlimited Corporation has not been extended by any stipulation of the parties or any order of the Court.

7. On information and belief, Restaurant Concepts Unlimited Corporation is a limited liability company organized under the laws of the State of Ohio with its principal office in Boardman, Ohio. True and accurate copies of corporate documents reportedly on file with the Ohio Secretary of State are attached to this Affidavit as Exhibit "B."

8. On information and belief, Restaurant Concepts Unlimited Corporation is not an infant or incompetent person within the meaning of Rule 55(a) because it is a corporation.

9. On information and belief, Restaurant Concepts Unlimited Corporation is not in the military service of the United States or its allies, as defined in the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. Appendix, § 520(1), as amended.

Signed by me on this 18th day of May, 2005, at Boston, Massachusetts.



Juan Alexander Concepción

SUBSCRIBED AND SWORN TO BEFORE ME on this 18th day of May, 2005.



Deborah Svirtunas

Notary Public in and for the Commonwealth of
Massachusetts

Commission expires: December 17, 2010

UNITED STATES DISTRICT COURT

District of Massachusetts

The Ground Round Independent
Owners Cooperative, LLC

V.

Charles Whitman a/k/a Chuck Whitman,
CTW Development Corporation,
Restaurant Concepts Unlimited
Corporation

SUMMONS IN A CIVIL CASE

CASE NUMBER:

05 10780 NMG

TO: (Name and address of Defendant)

Restaurant Concepts Unlimited Corporation
945 Windham Court, Suite 5
Boardman, OH 44512

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Juan A. Concepcion
Nixon Peabody LLP
100 Summer Street
Boston, MA 02110

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

SARAH THOMPSON

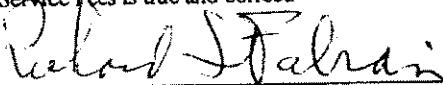
CLERK

DATE

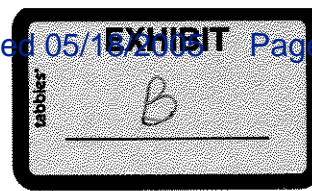
(By) DEPUTY CLERK



AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE 4/25/05 2:30 PM	
NAME OF SERVER <i>(PRINT)</i> Richard S. Fabian	TITLE Process Server	
<i>Check one box below to indicate appropriate method of service</i>		
<input type="checkbox"/> Served personally upon the third-party defendant. Place where served: _____		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> Returned unexecuted: _____		
<input checked="" type="checkbox"/> Other (specify): <u>Left at Corporate office with employee at 945 Windham Court, Suite 5, Boardman, Ohio 44512.</u>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p>		
Executed on <u>4/25/05</u>	 Signature of Server	
Date	174 North Park Ave., Suite 3 Warren, Ohio 44481	
Address of Server		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.



1 of 2 DOCUMENTS

THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

CERTIFICATION CAN ONLY BE OBTAINED THROUGH THE ISSUING GOVERNMENT AGENCY

OHIO SECRETARY OF STATE

Company Name: RESTAURANT CONCEPTS UNLIMITED CORP.

Type: CORPORATION FOR PROFIT

Status: IN GOOD STANDING

Status Date: 9/13/1999

Filing Date: 9/8/1999

County: MAHONING

Business Description: DOMESTIC ARTICLES/FOR PROFIT

Registered Agent:

CHARLES T. WHITMAN

Status: ACTIVE

Creation Date: 9/8/1999

AGENT ID: 199925101187

Registered Office:

945 WINDHAM CT STE 5

YOUNGSTOWN, OH 44512

Additional Information: DID NOT RECEIVE CONSENT TO USE PROTECTED NAME; PRINCIPAL LOCATION IS BOARDMAN

Filing Number: 1098563

Internal Number: 199925101187

Incorporators, Applicants:

CHARLES T. WHITMAN

Stock Information:

Type of Stock: NO PAR COMMON

Shares Issued: 850

History:

File Date: 9/8/1999

Type: DOMESTIC ARTICLES/FOR PROFIT

Document Number: 199925101187

2 of 2 DOCUMENTS

THIS DATA IS FOR INFORMATIONAL PURPOSES ONLY

CERTIFICATION CAN ONLY BE OBTAINED THROUGH THE ISSUING GOVERNMENT AGENCY

OHIO SECRETARY OF STATE

Company Name: RESTAURANT CONCEPTS UNLIMITED, LLC

Type: DOMESTIC LIMITED LIABILITY COMPANY

Status: IN GOOD STANDING

Status Date: 10/18/2003

Filing Date: 10/2/2003

Business Description: ARTICLES OF ORGANIZATION/DOM. LIMITED LIABILITY CO

Registered Agent:

CHARLES T WHITMAN

Status: ACTIVE

Creation Date: 10/2/2003

AGENT ID: 200327901584

Registered Office:

970 WINDHAM CT

BOARDMAN, OH 44512

Members, Managers, Partners:

CHARLES T WHITMAN

Additional Information: RECEIVED CONSENT TO USE PROTECTED NAME

Filing Number: 1414814

Internal Number: 200327901584

History:

File Date: 10/2/2003

Type: ARTICLES OF ORGANIZATION/DOM. LIMITED LIABILITY CO

Document Number: 200327901584

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

THE GROUND ROUND INDEPENDENT
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Whitman, C.T.W. DEVELOPMENT
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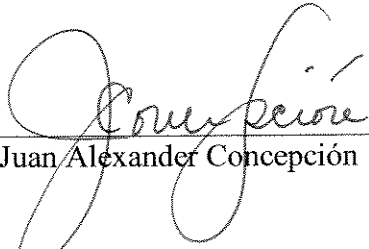
AFFIDAVIT OF NON-MILITARY SERVICE

Juan Alexander Concepcion, being duly sworn, deposes and states:

1. My name is Juan Alexander Concepción. I am over 18 years of age. I am an associate with the law firm of Nixon Peabody LLP, 100 Summer Street, Boston, Massachusetts 02110 and am duly admitted to practice law in the Commonwealth of Massachusetts and before this Court. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.
2. I am an attorney of record for Plaintiff The Ground Round Independent Owners Cooperative, LLC, in this action. I make this affidavit pursuant to the requirements of 50 U.S.C. App. § 520(1) in support of the request for a default judgment in this matter.
3. On information and belief, Restaurant Concepts Unlimited Corporation is a limited liability company organized under the laws of the State of Ohio with its principal place of business in Boardman, Ohio. (Affidavit of Juan Alexander Concepción in Support of Plaintiff's Request for Issuance of Notice of Default, Exhibit "B".)


4. On information and belief, I state that Restaurant Concepts Unlimited Corporation is not in military service.

Signed by me on this 18th day of May, 2005, at Boston, Massachusetts.



Juan Alexander Concepción

SUBSCRIBED AND SWORN TO BEFORE ME on this 18th day of May, 2005.



Deborah Svirtunas
Notary Public in and for the Commonwealth of
Massachusetts
Commission expires: December 17, 2010